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No. 06-786

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

AARON LOCKLEAR,

Petitioner,

v.

BERGMAN & BEVING AB; LUNA AB,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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January 10, 2007

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STATEMENT REGARDING RESPONDENT'S COUNTER-STATEMENT OF THE QUESTION PRESENTED

Respondent's counter-statement of the question presented should be ignored by this Court because it is not only a question rather than a statement, but also incorrectly discusses the facts of the case, rather than the actual split among the Courts of Appeals regarding the interpretation of Fed. R. Civ. P. 15(c)(3)(B), which is the actual issue.

INTRODUCTION

Respondent's Brief in Opposition to the Petition for Writ of Certiorari has erroneously and contrary to the rules of this Court, argued the merits of the case, rather than the issue of national importance regarding the conflicting interpretations regarding Fed. R. Civ. P. 15(c)(3)(B) among the Courts of Appeals. The purpose of the Petition for a Writ of Certiorari is to argue that an issue, and not the merits of the case, are worthy of review by this Court. Accordingly, this Court should ignore Respondent's arguments regarding the merits of the case.

1. The assertion that there is an irreconcible split among the Courts of Appeals is correct.

The split among the Courts of Appeals mentioned in the Petition is correct and Respondent has failed to prove that the Courts of Appeals are in agreement as to the correct interpretation of Fed. R. Civ. P. 15(c)(3)(B). Instead, Respondent has mistakenly argued the merits of the case and how they are distinguishable from other cases. The

issue is not how the facts of this case are distinguishable from other cases, but rather that the Courts of Appeals have ruled in opposite directions regarding a Federal Rule of Civil Procedure. The contents of the Petition clearly prove that there is an irreconcible split among the Courts of Appeals and that the only resolution is a decision by this Court.

2. Respondent's assertion that the Fourth Circuit's decision was correct should be ignored by this Court.

Respondent attempts to argue that the Fourth Circuit was correct in its decision, how Respondent has mistakenly argued the merits of the case, not the issue. Respondent has failed to argue why the Fourth Circuit's decision should divert from the plain meaning of mistake, as defined in *Leonard v. Parry*. See *Leonard v. Parry*, 219 F. 3d 25 (1st Cir. 2000). Further, Respondent offers no arguments as to why the Fourth Circuit was correct in its interpretation of Rule 15(c)(3)(B), but rather re-states dicta from the opinion, resulting in a weak and paltry argument.

3. Respondent has incorrectly stated the law in its assertion that a ruling by this Court would be an advisory opinion.

For there to be an advisory opinion, the issue is whether this Court would be ruling on an issue that *hasn't* presented a case or controversy under Article III of the United States Constitution. See *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41, 81 L. Ed. 617, 57 S. Ct. 461 (1937). Clearly, conflicting interpretations of Rule

15(c)(3)(B) among the Courts of Appeals and the ruling by the Fourth Circuit in this case have created a case or controversy and Petitioner has been adversely affected by the Fourth Circuit's ruling regarding the interpretation of Rule 15(c)(3)(B). Respondent erroneously argues that since *other issues* regarding personal jurisdiction and Rule 4(m) have been undecided, that a ruling by this Court would be an advisory opinion. This argument is a clear misunderstanding of the law, since this Court would not be ruling on the undecided issues that Respondent has claimed would render an opinion by this Court an advisory opinion. Respondent should have argued that there is no case or controversy regarding the interpretation of Rule 15(c)(3)(B), which would be the only basis for supporting the notion that a ruling by this Court would be an advisory opinion.

4. Respondent's assertion that Maryland's three-year statute of limitations was adequate is inapplicable to the issue and should be ignored.

Respondent attempts to argue the merits of the case, however, the merits of the case are irrelevant when deciding if there is an irreconcible issue of national importance regarding Rule 15(c)(3)(B). Whether the time limit of the statute of limitations was adequate is irrelevant because the relevant issue is whether the "lack of knowledge of the identity of the proper party" is a mistake under Rule 15(c)(3)(B).

Respondent has clearly avoided analyzing the true issue regarding Rule 15(c)(3)(B) and has instead attempted to prematurely argue the merits of the case. Respondent has failed to prove why courts should divert from the plain meaning of Rule 15(c)(3)(B), as stated in

Leonard v. Parry. See *Leonard*. Petitioner re-asserts that contents of the Petition are worthy of this Court granting certiorari to resolve a genuine issue of national importance regarding Rule 15(c)(3)(B).

CONCLUSION

This Court should grant the petition for certiorari.

Respectfully submitted,

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